



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

| | | | | |
|---|-------------|----------------------|---------------------|------------------|
| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/695,295 | 10/28/2003 | Joseph A. Gonzales | A-2966-AU | 4188 |
| 21378 7590 05/15/2009 APPLIED MEDICAL RESOURCES CORPORATION 22872 Avenida Empresa Rancho Santa Margarita, CA 92688 | | | | |
| EXAMINER VU, QUYNH-NHIU HOANG | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3763 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 05/15/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/695,295

Applicant(s)

GONZALES ET AL.

Examiner

QUYNH-NHU H. VU

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-15 is/are pending in the application.
- 4a) Of the above claim(s) 11-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Amendment filed on 3/24/09 has been entered.

Claims 1-2, 4-10 are present for examination.

Claims 11-15 are withdrawn.

Claims 16-25 are cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abramson (US 4,143,853) in view of Weinstein (US 5,460,616) or Brustad (US 2003/0139756) and Johnson et al. (US 4,946,133).

Abramson discloses a surgical valve comprising: a housing (including 11, 30); a proximal portion 30, a distal portion 11, a seal material 20 made of rubber having non-compressible characteristics; a proximal guide tube 14, a distal guide tube (including the portion of element 16 and extending through element 36 and also a part of element 11); a ridge and groove 31, 32 (Figs. 1-5) are the means adjustably moving the proximal housing portion axially relative to the distal housing portion to increase the pressure of the incompressible seal on the instrument and to create a locking force tending to inhibit movement of the instrument relative to the valve; a Luer lock 13 coupled to the distal housing portion

Abramson discloses the seal material 20 but does not including the seal material under a gel formation; the proximal housing portion is not adjustably axially relative to the distal housing portion.

Weinstein discloses a surgical valve similar to the claimed of invention. Furthermore, Weinstein further comprising: a gel 30 made of silicone or petroleum jelly disposed in the gel cavity (Figs. 2-3). As

Art Unit: 3763

noted that silicone gel is non-compressible pressure. *Please see Tripp, Jr et al. (US 20020198458) is evidence that silicone gel is non-compressible characteristics (see para [0042] of Tripp).*

Brustad discloses a surgical valve comprising: a housing; a seal material 54a disposed in the gel cavity 35a; the seal material having non-compressible characteristic, see para [0033].

Johnson discloses a surgical valve comprising: a housing including a proximal housing portion 27; distal housing portion 22; the proximal housing portion is adjustably movable axially relative to the distal housing portion to increase the pressure of the seal/valve 10 on the instrument and to create a locking force tending to inhibit movement of the instrument relative to the valve.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Abramson with a gel material, as taught by Weinstein or Brustad, in order to increase the pressure on an instrument and enhance the sealing characteristic.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the device of Abramson with the proximal housing is adjustably movable axially relative to the distal housing, as taught by Johnson, in order to create a locking force for preventing movement of the instrument relative to the valve.

Additionally, it is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e. for creating a pressure on an instrument extending through the valve to form a seal around the instrument; ...to increase the pressure of the incompressible gel on the instrument and to create a locking force tending to inhibit movement of the instrument relative to the valve, as functional limitations, do not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim, see In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974).

Response to Arguments

Applicant's arguments with respect to claims 1-2, 4-10 have been considered but are moot in view of the new ground(s) of rejection.

Art Unit: 3763

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to QUYNH-NHU H. VU whose telephone number is (571)272-3228. The examiner can normally be reached on 6:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763

Quynh-Nhu H. Vu
Examiner
Art Unit 3763